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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/736,119	12/15/2003	Lennart J. Brandel	7343-2	3619

7590

05/12/2006

JOHNS MANVILLE
Legal Department
10100 West Ute Avenue
Littleton, CO 80127

EXAMINER

PIZIALI, ANDREW T

ART UNIT	PAPER NUMBER
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1771

DATE MAILED: 05/12/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/736,119

Applicant(s)

BRANDEL ET AL.

Examiner

Andrew T. Piziali

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 06 March 2006.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-17 is/are pending in the application.
- 4a) Of the above claim(s) 11-17 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-10 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date <u>10/19/2005</u> . | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Election/Restrictions

1. Applicant's election without traverse of Group I, claims 1-10, in the reply filed on 3/6/2006, is acknowledged. Claims 11-17 are withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected invention.

Response to Amendment

2. The amendment filed on 3/6/2006 has been entered. The examiner has withdrawn the primary reference Moll rejections based on the amendments to the claims.

Information Disclosure Statement

3. The information disclosure statement (IDS) submitted on 10/19/2005 has been considered by the examiner. USPN 6,267,151 to Moll has been crossed out because the reference was previously cited in the office action mailed on 7/12/2005.

Claim Rejections - 35 USC § 103

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

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5. Claims 1-7 and 9-10 are rejected under 35 U.S.C. 103(a) as being unpatentable over anyone of USPN 6,337,104 to Draxo or USPN 6,759,116 to Edlund in view of USPN 3,755,051 to Stumpf.

Regarding claims 1-7 and 9-10, Draxo and Edlund each disclose a woven patterned glass fiber textile comprised of a glass fiber yarn with a titer of from 139 to 142 tex as the warp, and a glass fiber yarn having a titer ranging from 165 to 550 tex as the weft (see entire documents including column 2, lines 40-61 of Draxo and column 2, lines 35-54 of Edlund).

Draxo and Edlund each disclose that many glass fiber yarns may be selected for use when producing the woven materials, but neither appears to specifically mention a titer of from 270 to 300 tex as the warp. Stumpf, however, discloses that it is known in the wall covering art to vary the denier (tex) of a fabric based on the desired depth of pile or degree of loft of the loops and the desired appearance of the fabric (see entire document including the paragraph bridging columns 4 and 5 and column 11, lines 49-64). Absent a showing of unexpected results from use of a titer of from 270 to 300 tex as the warp, it would have been obvious to one having ordinary skill in the art at the time the invention was made to vary the titer of the warp fiber, such as from 270 to 300 tex, because it is understood by one of ordinary skill in the art that the titer determines properties such as depth of pile, degree of loft of the loops, and appearance of the fabric, and because it has been held that discovering an optimum value of a result effective variable involves only routine skill in the art.

Regarding claims 2 and 3, absent a showing of unexpected results from use of a titer of 278 tex as the warp, it would have been obvious to one having ordinary skill in the art at the time the invention was made to vary the titer of the warp fiber, such as to 278 tex, because it is

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understood by one of ordinary skill in the art that the titer determines properties such as depth of pile, degree of loft of the loops, and appearance of the fabric, and because it has been held that discovering an optimum value of a result effective variable involves only routine skill in the art.

Regarding claim 7, Draxo and Edlund each disclose that the warp density may be 3.15 to 3.4 threads/cm (column 2, lines 40-61 of Draxo and column 2, lines 35-54 of Edlund).

Regarding claim 9, Draxo and Edlund each disclose that the weft density may be 1.7 to 6.0 threads/cm (column 2, lines 40-61 of Draxo and column 2, lines 35-54 of Edlund).

Regarding claim 10, Draxo and Edlund each disclose that the textile may be impregnated with a chemical formulation comprised of a starch binder and a polymeric binder (column 3, lines 1-31 of Draxo and column 3, lines 1-22 of Edlund).

6. Claim 8 is rejected under 35 U.S.C. 103(a) as being unpatentable over anyone of USPN 6,337,104 to Draxo or USPN 6,759,116 to Edlund in view of USPN 3,755,051 to Stumpf as applied to claims 1-7 and 9-10 above, and further in view of USPN 6,267,151 to Moll.

Draxo and Edlund each disclose that the warp density may be 3.15 to 3.4 threads/cm (column 2, lines 40-61 of Draxo and column 2, lines 35-54 of Edlund), but neither appears to specifically mention a warp density of in the range of 6 to 10 threads/cm. Moll, however, discloses that it is known in the wall covering art to use warp densities of between 4 and 10 threads/cm (column 1, lines 50-62). It would have been obvious to one having ordinary skill in the art at the time the invention was made to vary the warp density, such as from 4 to 10 threads/cm, because it is understood by one of ordinary skill in the art that the warp density determines properties such as appearance and weavability, and because it has been held that discovering an optimum value of a result effective variable involves only routine skill in the art.

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7. Claims 1-7 and 9-10 are rejected under 35 U.S.C. 103(a) as being unpatentable over anyone of USPN 6,337,104 to Draxo or USPN 6,759,116 to Edlund in view of USPN 5,292,578 to Kolzer.

Regarding claims 1-7 and 9-10, Draxo and Edlund each disclose a woven patterned glass fiber textile comprised of a glass fiber yarn with a titer of from 139 to 142 tex as the warp, and a glass fiber yarn having a titer ranging from 165 to 550 tex as the weft (see entire documents including column 2, lines 40-61 of Draxo and column 2, lines 35-54 of Edlund).

Draxo and Edlund each disclose that many glass fiber yarns may be selected for use when producing the woven materials, but neither appears to specifically mention a titer of from 270 to 300 tex as the warp. Kolzer, however, discloses that it is known in the glass fiber art to vary the tex of a woven fabric, such as from 34 to about 1000 tex (with 272 tex specifically mentioned), based on the desired load resistance (see entire document including the paragraph bridging columns 4 and 5). Absent a showing of unexpected results from use of a titer of from 270 to 300 tex as the warp, it would have been obvious to one having ordinary skill in the art at the time the invention was made to vary the titer of the warp fiber, such as from between 270 to 1000 tex, because it is understood by one of ordinary skill in the art that the titer determines the strength of the fabric, and because it has been held that discovering an optimum value of a result effective variable involves only routine skill in the art.

Regarding claims 2 and 3, absent a showing of unexpected results from use of a titer of 278 tex as the warp, it would have been obvious to one having ordinary skill in the art at the time the invention was made to vary the titer of the warp fiber, such as 278 tex, because it is understood by one of ordinary skill in the art that the titer determines the strength of the fabric,

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and because it has been held that discovering an optimum value of a result effective variable involves only routine skill in the art.

Regarding claim 7, Draxo and Edlund each disclose that the warp density may be 3.15 to 3.4 threads/cm (column 2, lines 40-61 of Draxo and column 2, lines 35-54 of Edlund).

Regarding claim 9, Draxo and Edlund each disclose that the weft density may be 1.7 to 6.0 threads/cm (column 2, lines 40-61 of Draxo and column 2, lines 35-54 of Edlund).

Regarding claim 10, Draxo and Edlund each disclose that the textile may be impregnated with a chemical formulation comprised of a starch binder and a polymeric binder (column 3, lines 1-31 of Draxo and column 3, lines 1-22 of Edlund).

8. Claim 8 is rejected under 35 U.S.C. 103(a) as being unpatentable over anyone of USPN 6,337,104 to Draxo or USPN 6,759,116 to Edlund in view of USPN 5,292,578 to Kolzer as applied to claims 1-7 and 9-10 above, and further in view of USPN 6,267,151 to Moll.

Draxo and Edlund each disclose that the warp density may be 3.15 to 3.4 threads/cm (column 2, lines 40-61 of Draxo and column 2, lines 35-54 of Edlund), but neither specifically mentions a warp density of in the range of 6 to 10 threads/cm. Moll, however, discloses that it is known in the wall covering art to use warp densities of between 4 and 10 threads/cm (column 1, lines 50-62). It would have been obvious to one having ordinary skill in the art at the time the invention was made to vary the warp density, such as from 4 to 10 threads/cm, because it is understood by one of ordinary skill in the art that the warp density determines properties such as appearance and weavability, and because it has been held that discovering an optimum value of a result effective variable involves only routine skill in the art.

Response to Arguments

9. Applicant's arguments filed 3/6/2006 have been fully considered but they are not persuasive.

The applicant asserts that there is no motivation to modify Draxo or Edlund as taught by Stumpf, and that there is no reasonable expectation of success, because Stumpf is directed to nonwoven materials while Draxo and Edlund are directed to woven materials. The examiner respectfully disagrees. Draxo clearly discloses that while the preferred embodiment of the invention utilizes glass fabrics in woven form, nonwoven fabrics may be utilized (column 2, lines 20-22). In addition, Edlund clearly discloses that while the preferred embodiment of the invention utilizes glass fabrics in woven form, nonwoven fabrics may be utilized (column 2, lines 15-17). It is noted that Stumpf is reasonably pertinent to the particular problem with which the applicant was concerned, which is forming a fabric that is aesthetically pleasing to the sight and touch.

The applicant asserts that there is no motivation to modify Draxo or Edlund as taught by Kolzer, and that there is no reasonable expectation of success, because there are alleged "significant differences between the fabrics disclosed in the primary references and that disclosed in Kolzer." The examiner respectfully disagrees. The applicant appears to be arguing non-analogous art. In response to applicant's argument that Kolzer is nonanalogous art, it has been held that a prior art reference must either be in the field of applicant's endeavor or, if not, then be reasonably pertinent to the particular problem with which the applicant was concerned, in order to be relied upon as a basis for rejection of the claimed invention. See *In re Oetiker*, 977

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F.2d 1443, 24 USPQ2d 1443 (Fed. Cir. 1992). In this case, Kolzer is in the field of applicant's endeavor, which is impregnated woven glass fabrics.

It is noted that the applicant failed to show, or attempt to show, unexpected results from the use of a titer of from 270 to 300 tex as the warp.

Conclusion

10. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.


Any inquiry concerning this communication or earlier communications from the examiner should be directed to Andrew T. Piziali whose telephone number is (571) 272-1541. The examiner can normally be reached on Monday-Friday (8:00-4:30).

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Terrel Morris can be reached on (571) 272-1478. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

atp

 5/9/06
ANDREW T. PIZIALI
PATENT EXAMINER